

BOARD OF ADJUSTMENT MEETING HELD IN THE COUNCIL CHAMBERS OF  
COTTONWOOD HEIGHTS AT 6 P.M. ON JULY 26, 2006.

Members Present: Debbie Tyler, Farrell Jensen, Paul Throndsen, James Holtkamp, Bob Wilde, Noor Ul-Hasan

Staff Present: Planning Director Michael Black, Associate Planner Glenn Symes, City Attorney Shane Topham, City Intern Bill Cobabe, City Recorder Linda Dunlavy, Planning Coordinator Sherry McConkey

Others Present: Barney Carlson, Paul Belnap, Brent Robinson, Jerome Gourley, Scott Clark, Virginia Price, Edward Price, Russ Monroe, Terry Jensen, Jill Cushing, Jeff Baker

Excused: James Adinaro

Chair Jensen called the meeting to order at 6:00 pm.

1.0 **Public Comment**

No public comment was given.

2.0 **Appeal – Royal Oaks Estates PUD – 2400 East Creek Road**

Chair Jensen asked how the unofficial transcript of the Planning Commission meeting was prepared.

Mr. Clark said that discs were provided by the City Recorder and transcribed by him.

City Attorney Shane Topham noted that he had also transcribed the minutes of the Planning Commission meeting. He explained that there are some corrections that need to be made, and speakers that need to be identified. Once the changes are made he will make copies available to all interested parties.

Chair Jensen stated for the record that the Board received two transcriptions of the Planning Commission meeting.

2.0 **Royal Oak Estates Appeal**

2.1 City Attorney Shane Topham recommended that the procedure for this item be reviewed.

2.2 Chair Jensen reviewed the procedure to be followed for the appeal.

- 2.3 Planning Director Michael Black explained that originally Staff worked with Barney Carlson on fine-tuning his 2400 East Creek Road PUD application. Staff reviewed the requirements for the Planned Unit developments, subdivisions, streets, roads, public places, etc. The proposed PUD is located in the RR-1-21 zone and is a conditional use.

Mr. Black noted that this development would be subsequent to a zone change. The General Plan allowed for a request to be made to change the zone. The request was made by the owner, taken to the Planning Commission and they voted to send a favorable recommendation for a zone change to the City Council, where the zone was changed to RR-1-21, half-acre zoning.

Mr. Black explained that a conditional use, as described in state code, is a land use, that because of its unique characteristics or potential impact on the municipality, surrounding neighbors, or adjacent land uses, may not be compatible in some areas, or may be compatible only if certain conditions are required that mitigate or eliminate the detrimental impacts.

Mr. Black focused on 'detrimental impacts' and what kind of 'mitigating effects' were proposed to the Planning Commission to impose on the developer as conditions. Condition #5, on Page 2 of the Staff Report states "Lighting is required to be full cut-off able, light fixtures shall be as shown in the plans." Mr. Black stated that Staff recognized that this is an area that is developing next to an existing area and to mitigate the effects that lights in this development may have at night, the City makes sure that lights are full cut-off so that they shine down instead of out. Especially where this is a rural residential area and the City is trying to preserve the quality of life with larger lots.

Mr. Black reviewed a map showing the setbacks and lot layout for the proposed PUD. He pointed out the open space which is part of the HOA property and which includes everything that is landscaped outside of the road. The City has required that the landscaping be bonded 100 percent. Some people feel that open space is generally characterized by a park, but in some cases a park is not needed because there is one accessible to the development. In those cases the City looks at different ways to obtain open space to meet the requirements. There is 20 percent open space including a detention pond which is open, but does not contain any type of playground equipment.

Mr. Black explained that the density is based on the overall acreage of 7 ½ acres with a maximum of two units per acre. The roads and open space in the PUD were counted toward the total acreage in the development. The roads and the open space are owned by the HOA.

Mr. Black noted that the back setback includes a ten-foot tree protection strip surrounding the entire property as shown on the plat. The City has required a six-foot, decorative, pre-cast concrete fence around the property on the west side along Royal Lane. The fence would be located on Mr. Carlson's property line.

- 2.4 Scott Clark, Appellant, presented the official plat from the office of the County Recorder, noting that he would like to make reference to the plat. He stated that the Association is not appealing the development, and they are no longer concerned about the wall. He said that they are concerned about the process. He stated that Cottonwood Heights was supposed to empower the citizenry and enforce zoning such that people feel that their voice is heard. He said that they are not opposed to the developer, but are opposed to a developer getting more than he is entitled to.

Mr. Clark held that this development should only have 14 units, not 15. The unofficial minutes of the first zoning meeting held January 18, 2006, state that "Mr. Carlson has about 7.52 acres". In Mr. Carlson's application he says that he has 7.6 acres and later it is unclear how much he really has. Mr. Clark said that the RR-1-21 zone requires 20 percent be devoted to common areas.

Referring to the plat map, Mr. Clark pointed out the center of Creek Road. He said that Mr. Black told the Planning Commission that the property is already dedicated and very little dedication would be required. He later said that part of the area being counted as common area is actually 25 feet of Creek Road measured from the middle of the road. Mr. Clark said that common area may not necessarily be a public park, but it is not a road. He said that the property is in use for vehicular traffic and if the City permits this to go forward precedence is being set as to what a common area will be in the future. He said that the City is enabling a developer to get more than he is entitled to. Mr. Clark said if there were 14 units there would be no objection from the appellant.

Mr. Clark said that the central issue for the appellant is 2400 East. Mr. Black stated that City research determined that 2400 East is a public lane. However, a letter he provided the Board of Adjustment from Beverly Lund shows that 2400 East was asphalted it was done by Salt Lake County. He explained that Exhibit F is a plat drawn by the Salt Lake County Assessors Office which shows that 2400 East is not assessed as a tax paying parcel, but is a public way and as a public way belongs to Cottonwood Heights City.

Mr. Clark said that Mr. Carlson has presented evidence that 2400 East is a private road, but he believes it depends on a deed which he has included which goes from Alta Title Company to the Association which was recorded in 1972, Exhibit G1. Exhibit G2 shows that Alta Title obtained title to that parcel by an unrecorded and unsigned deed that was recorded in error and has never transferred to the Royal Lane Homeowners Association.

Mr. Clark said that the City required the developer to put in improvements, including a 25 ½ foot setback to put in a curb, gutter, sidewalk, from Creek Road to the end of the public sector. Mr. Clark said extension of the sidewalk is not the problem; it is where the wall sets. In the Commission hearing he was told that the wall would be 15 feet back. Now, tonight, Mr. Black said that the wall would go on the property line which creates a visual problem. He said that the appellant wants it to be clear that the Planning Commission required that the wall be 15 feet back, that there be sidewalk, and curb and

gutter at least down to the end of the public area. He suggested that there be a wrought iron fence or some other kind of fence and a gate that can be opened by emergency personnel.

Mr. Clark said that all they want the BOA to do is to say that whatever the City decides, doesn't affect the appellants contractual relationship with the developer. He said the HOA has CCRs and the developer does not think he has to comply. He stated the HOA believes that their relationship to him under those CCRs is independent of this process.

- 2.5 Paul Belnap, representing Barney Carlson, stated that Mr. Clark indicated that curb, gutter, and sidewalk ought to be included on Royal Lane, a private lane. He said that in a document entitled "Agreement with Respect to Right-of-way and Payment of Assessments" it states "The Royal Lane Homeowners Association, a Utah nonprofit corporation, is charged with the responsibility of maintaining the access road between Creek Road and the real properties lying adjacent to Royal Lane." When the HOA dealt with the Cottonwood Improvement District that had come in and utilized the private lane, and damaged it, they agreed to make repairs to the road. In the agreement the Association indicates that the Cottonwood Improvement District proposed the construction of a "waste water holding facility on a parcel immediately adjacent to the declarants parcel utilizing the private right-of-way known as Royal Lane" The document continues to read "the improvement district has entered into an agreement with the Association to restore all damage done to the private right-of-way".

Mr. Belnap said that Mr. Clark referred the board to a section plat from the County, and indicating there is a line showing that it has not been assessed. The current plat has been amended and the line has been removed, showing that it is a private lane. He said that the Homeowners Association has installed its own speed limit signs on the lane indicating 'private road' speed limit 10 mph. He noted that these issues came to light after the hearings referred to by Mr. Black and Mr. Clark. There was the assumption made when curb gutter and sidewalk was discussed that this was a public road and Mr. Belnap said they believe it is clear that this is not a public road, but is a private lane.

Mr. Belnap said that in the planning process, Mr. Carlson worked with the City representatives so that there is no access from this subdivision onto the private lane, and is not being utilized for ingress or egress in any way. Mr. Belnap said that there was discussion that this development will create a safety hazard. He pointed out he and Mr. Carlson did not know that testimony could be given or considered in this appellate situation.

The families Bringhurst and Mr. Willy who owned the property, in the corner being discussed about a concern had a fence right up to the property line with trees and scrub, creating a blind curb. In his proposed development, Mr. Carlson is proposing something that is much less obtrusive and not a problem.

When the homeowners dealt with the Bringhurst family to bring them into this situation, in a document said “due to the existence of a blind curve situated on a steep hill, and due to the narrowness, 12-16 feet of paved roadway has created a traffic hazard which cannot be improved unless the roadway is widened. They worked on this matter with the improvement district. They widened the road in that area, but realized there was problems in that bend. They now want to offload a tremendous financial responsibility onto Mr. Carlson to improve a private lane with curb, gutter and sidewalk, lighting, etc. on a private lane that they have always had.

Mr. Belnap said that in regard to the issue of the fence and the wall, Mr. Carlson is willing to do what the City requests in terms of a fence or wall.

Referring to a plat shown on the screen, Mr. Belnap said it is his understanding that the area Mr. Clark referenced is an area that is on Mr. Carlson’s deeded ground. That ground is being deeded to the City, in addition to providing improvements of lighting, curb, gutter, and sidewalk. He said that to indicate that it is not appropriate to have 15 lots in this area is incorrect, and he has worked with the City through that issue.

- 2.6 Barney Carlson said that he decided not to utilize Royal Lane at all, so that the traffic would not be affected. He said he has taken three houses off of Royal Lane which will access off of Creek Road. He stated it was never his desire to offend any neighbors on Royal Lane, and is sorry it has come to this. He said that hopefully these matters can be solved and they can be good neighbors.

- 2.7 Chair Jensen asked Mr. Black to clarify the 15 unit issue.

Mr. Black said that traditionally when road dedications are required, it is common to count the area toward the gross developable acreage, to give something tangible back to the developer for requiring them to give that property to the City, and to make the improvements required which include asphalt tie-ins, curb, gutter, sidewalk, storm drain, etc.

- 2.8 Ms. Tyler asked why the fence was ever proposed to be back 15 feet.

Mr. Black explained that the roadway was drawn in based on a survey of the property. The 15 feet was supposed to be from the asphalt. It was represented to the Planning Commission and Staff that any fence in this area would be set back 15 feet from the existing asphalt. It would not be on the property line in this area because Mr. Carlson’s property line extends across the road.

- 2.9 Mr. Holtkamp said that the concern is primarily on behalf of the existing homeowners association. Issues include whether the proposed fence somehow impairs the ability to deal with a potential flood event; whether the proposed development and the placement of the fence pose a safety issue for users of the road; and whether a portion of Creek Road is being counted as part of the applicant’s property for purpose of the open space. He asked Staff to address the safety concerns, regardless of the zoning concerns.

Mr. Black said the first question is whether there is a safety issue. He said that Mr. Clark has pointed out that the safety issue is for pedestrians walking on the east side of the street. It is a private road and happens in some places to be paved up to the property line of Mr. Carlson's property. He agreed it could be a safety issue for pedestrians and they would probably have to walk on the west side of the road. Mr. Black explained that the only part of the fence the appellant is concerned with is by the flood area. The flood control manager did not believe it was a big issue. Mr. Black proposed a wrought iron fence with a gate if it satisfies the issues and if the developer will agree.

- 2.10 Mr. Holtkamp asked what the City is giving back to the developer.

Mr. Black said that the City is counting part of Creek Road as going toward his obligation to have 20 percent open space

- 2.11 Mr. Throndsen said that he is confused that an existing roadway is something the City would expect to be given because they already have it. He asked if there was any consideration by the Planning Department relative to that area in Creek Road, as well as the other areas in the improved private right of way for density determination.

Mr. Black said the private road is owned by the Homeowners Association and that is counted toward the density. There are places where people still own property to the middle of the road and Mr. Carlson has fee title to the middle of the road.

- 2.12 Ms. Ul-Hasan said that it is her understanding that the property is not useable one way or the other and the City is allowing the applicant to have 15 lots instead of 14 by including the road. She questioned how making this project denser will benefit the City.

- 2.13 Mr. Wilde said that as he reads the appeals ordinance, the Board of Adjustment is to decide whether or not the decision of the Planning Commission made was arbitrary or capricious, and whether or not there is substantial evidence in the record to support the decision they made. He said it would seem that the Board should look at the transcript and the packet that was before the Planning Commission and see if they made their decision in a fashion that shows that they considered these issues, and if there is substantial evidence in the record for their decision.

Ms. Ul-Hasan said it is important for the Board to listen to what the appellants have to regardless of the transcript and make a decision based on not just the transcript, the information received at the Board of Adjustment meeting.

Mr. Wilde said he is not sure he wants to set a precedent where the Board 'fly-specking' every decision the Planning Commission has made. He said that he does not read the ordinance to allow 'two bites of the apple'. The Board is to decide whether or not the Planning Commission did their job correctly.

- 2.14 Chair Jensen explained that there are many questions from the Board in terms of some of the issues being discussed. He stated that the purpose of the meeting is to assure that everyone is heard and the issues are on the table.
- 2.15 Chair Jensen opened the meeting for public comment.
- 2.16 Brent Robinson, 7995 Royal Lane, said the issue that is most important is the sidewalk. The Staff report states “the proposed use will not under the circumstances of the particular case be detrimental to the health safety or general welfare of persons residing or working in the vicinity.” Mr. Robinson said the developer’s property comes right to the road and the Homeowners Association has asked that the City require curb and gutter, park strip, and sidewalk for the protection of the children of the 30 homes on Royal Lane. He noted that the road has been there since 1930 when the City put in a well. He explained that the Homeowners’ Association is asking that the City require the developer to perform what was requested of him at the Planning Commission meeting. He said the fence issue has been addressed; the density is a separate issue and hopes the Board will uphold what was originally given to the citizens.
- 2.17 Jeff Baker, 7954 Royal Lane, said that Mr. Belnap talked about scrub oak and fence that were on the corner of the existing property. He said the fence was only a four-foot high chain link fence. The fence and trees were torn down several years ago and the visibility greatly improved. He said a six-foot solid fence in that location would force the traffic to the west side of the road creating a hazard. The sharper the bend, the more difficult it will be to make the turn and the more encroachment there will be on the west side of the road.
- 2.18 Mohammad Pokazamium, 8120 South Royal Lane, said Mr. Black suggested they put the sidewalk on the west side, which is inside his property line. He said that he is the only one that is immediately affected by the construction. He supports the requirement by the Planning Commission that the sidewalk be placed on the east side, especially for the children.
- 2.19 Debbie Monroe, 2351 Royal Lane, said that the developer is using Royal Lane as if it were a public road. Every day he drives his huge trucks on it and has had the street dirty for months. She said that the contractors are parking on the road and dumping their garbage. He is not treating the road as a private lane, and if it is, he should be putting up a construction fence and coming in off of Creek Road.
- 2.20 Jim Shabato, 2367 East Royal Lane, said he has lived at this address for 12 years. He pointed out that he attended two meetings where Mr. Carlson committed to do certain things, and now says he is not going to. Mr. Carlson attended a Homeowners’ Association Board meeting and told them he would do certain things, and should be held accountable.

- 2.21 Chair Jensen said that the purpose of the Board of Adjustment is to hear and decide the appeal of the Planning Commission decision and to make certain that the records are correct so that the Board can move forward.
- 2.22 Chair Jensen agreed with the comments made by Mr. Wilde regarding the standard of review and believes the questions and comments tonight have helped to clarify the issues. He stated that since the Board of Adjustment is here to decide whether or not the Planning Commissions decision was arbitrary or capricious, or was not otherwise supported by the record, that the attorneys be given three minutes to respond for clarification.
- 2.23 Mr. Scott Clark said he provided an unofficial transcript of the Planning Commission meeting and read Mr. Black's testimony from Page 2 as follows: "What we've had Barney do is – there are a few lots in this area, we had him set back 15 feet from the edge of the asphalt the property line, then another ten feet setback in there from the building line there should not be an issue in the line of sight that they are claiming an issue. This is really an aesthetics issue."

Mr. Clark said that in the official hearing, Mr. Black calls the attention of the Planning Commission to the Engineer's opinion and also to the City Attorney that there might be a safety issue if there isn't a sidewalk. This was an opportunity for the City to get this road improved in the public sector by installing curb, gutter, and inlet drains. Mr. Clark said that when they left the Planning Commission hearing they had an understanding that there was to be a setback of 15 feet; a sidewalk; a parkstrip; a gutter; inlet drains; and that the sidewalk would continue in the private area, and that even in the private area the wall would be 15 feet back which would eliminate any visual obstruction at the corner. He said that tonight there is a different Michael Black and he does not know what has happened. He said that all they are asking be changed is that the improvements that were approved by the Planning Commission continue. He said that if the Board were to go back and ask where in the minutes the detail is, it is in the mind of the Staff, and it changes.

- 2.24 Mr. Belnap said that everyone is concerned with safety issues, but the Homeowners' Association has deemed that the roadway that they have had, which is private, and have required anyone using it, such as improvement districts, to sign agreements, has deemed that the roadway has been sufficient for 20+ years. To burden Mr. Carlson to solve what they perceive to be a safety problem that they regulate and can regulate is not reasonable.

Mr. Belnap said the setback issue has been misunderstood by Mr. Clark. The setback issue being discussed is with respect to the construction of residential improvements on the property. All of the discussions to date were based on incorrect assumptions on points in the process where it was assumed by people that this was a public road, even assumed early on in the process by the City that it was a public road, and they have now determined it is a private road.



- 2.25 Mr. Black said that since the Planning Commission meeting, the ownership of the road has changed. It was first reported to the City that the road was public. A title report was done, research was done, the surveyors looked at the road, the City Engineer looked at the road, and made a statement to the City that the road is private. The City does not own any of the road.

Mr. Black said he does not disagree with Mr. Clark on the 15-foot setback. It was reported to Mr. Black by the engineer for the developer, that it would be 15 feet away from the paved portion of the road. A site visit showed that the road abuts up to the property line. Staff made the requirement to the developer to fix the road. Staff figured that the County, in their short-sightedness had developed a road up to somebody's property line without a sidewalk, a road that is verily wide enough to fit two cars going past each other, so Staff made a requirement for the developer to improve the public portion of the road, but it turns out that the short-sightedness was not on the part of the County, it was on the part of the Homeowners' Association when they built a road right up to somebody's property.

- 2.26 Chair Jensen recommended that the meeting be adjourned and the matter taken under advisement.

- 2.27 **MOTION:** Ms. Tyler moved to take this matter under advisement and make a decision at a later date after further discovery on the information received. The motion was seconded by Mr. Throndsen.

**DISCUSSION:** Mr. Wilde said that the packet from Staff is detailed and includes an official transcript. He said it is clear that the Planning Commission considered each of the issues which have been raised and there is evidence in the record sufficient to support their decision. He said that he saw no need to adjourn and go back and ask them to recreate a new record.

Mr. Throndsen agreed with Mr. Wilde that additional information was not necessary. However, some of the information was not received until today and asked that the Board be given time to review the additional information.

The motion passed on a vote of 4-1 with Mr. Wilde voting no.

- 2.28 Mr. Topham said an electronic meeting can be held if necessary. He suggested that a work session be scheduled. A written decision will need to be issued with findings and conclusions.

The public meeting will be planned for August 24, 2006 at 8:30 p.m. to present findings.

- 3.0 **Public Hearing - Variance Request – T-Mobile**

3.1 Mr. Symes explained that staff had received a request by Jerome Gourley to extend an existing telecommunications tower from 60 feet to 80 feet to allow for additional cellular equipment. Mr. Gourley was informed that an 80 foot tower would not be allowed in the PF zone. Mr. Gourley at that point decided to appeal staff's decision and apply for a variance. A Copy of Mr. Gourley's letter is included in the staff report dated July 26, 2006. Mr. Symes stated that staff is recommending denial of this variance based on the reasons listed in the staff report, which states:

1. Staff feels that the literal enforcement of the Wireless Communications Facilities, specifically to height limit, may not cause an unreasonable hardship on the applicant. The height limit of 60' is enforced for all new applications for new and co-located telecommunications towers, power poles, utility poles and other similar structures. Staff feels that the applicant would be able to co-locate using the existing 60' tower as it has taken place elsewhere in the City by other providers.
2. In the case of this variance request, staff does not feel that there are any special circumstances attached to this property that do not generally apply to other properties in the same zone. There are many PF zones throughout the City that are similar in nature and staff feels that the granting of this variance may open the possibility for similar action in these other areas. Staff feels that if this possibility were to be presented for action on similar PF parcels, the ability granted by City ordinance to control such structures may be undermined.
3. Staff feels that granting this variance is not essential to the enjoyment of a substantial property right possessed by other property in the same zone. Currently, no telecommunication tower is taller than 60' and several are co-located with more than one company's equipment on the same tower. The height limit of 60' is enforced for all new applications for new and co-located telecommunications towers, power poles, utility poles and other similar structures. There are currently legal non-conforming power poles taller than 60' along Fort Union Boulevard. However, the approval for these was given by Salt Lake County prior to the incorporation of the city of Cottonwood Heights and does not conform to the zoning regulations adopted by the City.
4. Staff feels that granting this variance will substantially affect the general plan and will be contrary to the public interest. Staff feels that granting a variance for this site will allow other sites to be developed in a similar manner potentially undermining the ability granted by the City ordinance to control such structures. Staff feels that due to the apparent success of co-locations on towers of 60' or less throughout the city that a height extension to 80' is not necessary for the provision of service and therefore a public interest.
5. If this applicant receives a variance for a height extension, staff feels that this will be contrary to the spirit of the land use ordinance. Staff feels that the granting of

this variance would allow other properties to develop in a similar manner and may undermine the spirit of the land use ordinance to control the height of these structures.

3.2 Jerome Gourley representing T-Mobile stated that the staff has recommended denial the application based on the following;

1. Limiting the height of the monopole to 60' would still enable T-Mobile to co-locate and that co-locating has taken place in other areas of the city.

Mr. Gourley would like staff to provide a list of said poles.

2. No special circumstances are attached to this property.

Mr. Gourley stated that the special circumstance is that an existing pole is on the property that has been servicing the area for many years. He went on to state that if the variance is granted other carriers may be able to co-locate on other existing sites. This would reduce the number of poles in the city.

3. Several towers are located throughout the city and have carriers co-locating on them.

Mr. Gourley would like the locations of these poles.

4. Co-locations on towers less than 60' have been successful and therefore make it unnecessary to extend an additional 20'.

Mr. Gourley would again ask that staff produce the addresses of such poles.

5. Granting the request would undermine the spirit of the land use ordinance authority.

Mr. Gourley stated that the City does not have the authority to control wireless communications only to regulate the placement.

T-Mobile would like the variance be approved based on the following;

1. The staff report presented tonight is flawed and full of false information.
2. An unreasonable hardship is created when an acceptable solution to a signal problem is ignored. This creates a requirement of a new monopole and violates the spirit of the Cottonwood Heights ordinance which is to encourage co-location.
3. A height precedent of 80 feet has been established by Utah Power & Light. These poles run east and west of Fort Union Blvd.

4. T-Mobile has provided clear and convincing proof that special circumstances are attached to the property in question.
5. Granting this variance will not negatively affect the General Plan and will not be contrary to the public interest. T-Mobile is federally mandated by the FCC to provide wireless service.

In summary Mr. Gourley stated that T-Mobile had supplied three examples of the negative language used in the Cottonwood Heights telecommunications code. This code suggests that the City may control wireless facilities when in fact that police power is not granted to the City.

3.3 Chair Jensen opened the public hearing.

3.3 Mr. Wilde asked what T-Mobile had done to find alternate locations for the 60' pole.

Mr. Gourley stated that this variance is the fourth official attempt at locating a pole within the boundaries of Cottonwood Heights. He stated that the following applications were denied for various reasons. The locations are as follows:

1. Butler Elementary
2. Property located across from Butler Elementary owned by Murray City.
3. A nearby strip mall
4. Butler sub-station

3.4 Mr. Wilde referenced a letter written by Mr. Gourley dated June 2, 2006 that stated no eastside potential existed and asked where the tower would need to be in order to cover the particular segment?

Mr. Gourley stated that it needs to be on the north side of Fort Union Blvd. This is where the poor signal problems are occurring.

3.5 Chair Jensen asked Mr. Gourley what would be gained by the additional 20'.

Mr. Gourley stated that they would be able to have a location that enables T-Mobile to place their antennas and would fix their signals problems.

3.6 Mr. Holtkamp asked Mr. Gourley what problems are being reported with the signal?

Mr. Gourley stated the main issues have been dropped calls.

- 3.7 Mr. Wilde asked Mr. Gourley why can't this be put on a 60' pole?

Mr. Gourley explained that this could be done on a 60' pole if there was one. The problem is that he needs to extend it to 80' to accommodate the antennas.

- 3.8 Mr. Black stated that the City has not denied any of the locations for a cell tower that Mr. Gourley has referenced. The Butler Elementary application was denied by the district and there are other locations in the City where the equipment could be located.

- 3.9 Ms. Harwell asked if Cingular had an 80 foot tower.

Mr. Black stated that there are no 80 foot towers in Cottonwood Heights and believed that Mr. Gourley was referring to power poles. He further stated that there are applications currently under review for 40 and 60 foot towers and one is a co-location on a 60 foot tower where they are not extending the tower.

- 3.10 Mr. Wilde asked if the pole that T-Mobile was considering was at capacity at the 60 feet.

Mr. Gourley stated that there was already two providers on it and stated that T-Mobile cannot go below the tree line due to radio frequencies and the need for line of site. He went on to say that he does not dispute that there are applications that are lower than 60 feet and that T-Mobile needs a higher topography for Cottonwood Heights.

- 3.11 Mr. Black stated that the Regional Commercial zone would also accommodate a cell tower as a Conditional Use and is another option available to T-Mobile.

- 3.12 Mr. Topham asked Mr. Gourley if the problem was more that T-Mobile was unable to cut a deal with property owners and not the location.

Mr. Gourley stated that it is sometimes difficult to get the property owners to agree and to get the RF engineers to accept.

- 3.13 Chair Jensen asked again if T-Mobile had exhausted all options for locations in the City.

Mr. Gourley stated that the issue is whether T-Mobile can find a site that is useful for them and not just a site.

Chair Jensen asked Mr. Gourley to narrow it down to where they needed to place the tower.

Mr. Gourley stated that T-Mobile needed to locate the tower East of 2300 East, North of 7200 South and has gone as far as 3000 East where the property is owned by the Forestry service and was not able to work a deal.

- 3.14 Chair Jensen stated that the problem seemed to be location and possibly economic in the placement of the pole.

Mr. Gourley stated that it was his understanding that economics could not be discussed in a Board of Adjustment hearing and cannot be part of the decision of granting or denying a variance. He went on to say that it would be less expensive to extend the tower than it would be to build another one.

- 3.15 Mr. Wilde asked Mr. Symes why this particular extension was denied.

Mr. Symes explained that an 80 foot pole is not allowed in the PF (Public Facility) zone according to code and would only be allowed as a Conditional Use in the (CR) Regional Commercial zone.

- 3.16 Mr. Throndsen asked staff if approving any variance would send a negative precedent or if it is a case by case scenario?

Mr. Topham stated there are provisions in the 1996 act that prohibits discrimination between providers and there would be a concern that granting the height variance to one provider would require the granting of the same height variance to another.

- 3.17 Mr. Throndsen asked what the rationale was in allowing 80 foot poles in the CR (Regional Commercial) zone versus the PF (Public Facility) zone and what would the zoning be if not PF (Public Facility).

Mr. Topham explained that the CR (Regional Commercial) zone is the cities most commercial intensive zone and the other zones are scattered throughout the city and include residential areas.

Mr. Black concurred with Mr. Topham explaining that the CR (Regional Commercial) zone is concentrated around major intersections and major collectors. The PF (Public Facility) zone can be scattered throughout the city.

- 3.18 Ms. Tyler asked if granting a variance of 5 feet would help T-Mobile.

Mr. Gourley stated that it would help the situation provided the ability to mount the antennas at the top of the 65 foot mark.

Ms. Tyler asked why the need for 80 feet and not 65 feet?

Mr. Gourley stated an extension is in 20 foot sections. If a five foot section is approved they would custom build it and that is acceptable.

Ms. Harwell noted that it would actually be an 8 foot variance if they need to place the antennas on the top of the 5 foot extension.

3.19 Chair Jensen closed the public hearing

3.20 City Attorney Shane Topham advised the board members that the outcome of their vote will need to be in writing with a copy of the transcript of tonight's meeting and a decision should be made after a work session is held to discuss all information gathered.

3.21 **MOTION:** Mr. Holtkamp moved to consider this item at the work session scheduled for August 10, 2006 and will be followed up by a business meeting on August 24, 2006 at which time a letter will be available outlining the findings and conclusions of law of this board.

The motion was seconded by Mr. Throndsen and passed unanimously on voice vote.

4.0 **MOTION:** Mr. Throndsen moved to adjourn the meeting. The motion was seconded by Mr. Holtkamp and passed unanimously.

Meeting adjourned at 8:14 p.m.

Approved: 12-8-2006 sm